

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10416 of 1995

WITH

CIVIL APPLICATION No 5784 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NANALAL MAGANLAL PANCHAL

Versus

COLLECTOR

Appearance:

MR AM RAVAL for Petitioner
NOTICE SERVED for Respondent No. 1, 3
MR NAVIN PAHWA for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 24/06/98

ORAL JUDGEMENT

This petition challenges the order passed by the State Government in a revision application under Section 211 of the Bombay Land Revenue Code, 1879 by which the State Government has set aside the order passed by the Collector on 9.12.1994. By that order the Collector had allowed the appeal of the petitioner herein and held that Yusuf Gannibhai Naguji, respondent No. 2 herein, had encroached upon the land belonging to the petitioner and put up construction thereon. Hence, the said land

alongwith the construction thereon was directed to the handed over by respondent No. 2 to the petitioner.

The Government has set aside the order of the Collector only on the ground that respondent No. 2 herein Yusuf Gannibhai Naguji was a necessary party and was required to be given an opportunity of being heard before passing any order adverse to him.

2. The petition was already admitted earlier and has been pending for final hearing. At the time of admission of this petition on 15.1.1996, this Court directed the respondents to maintain status quo with regard to the disputed property.

3. When Civil Application No. 5784 of 1998 filed by the original petitioner to restrain respondent No. 2 from putting up any construction on the land in question has come up for hearing, with consent of the learned counsel for the parties, the main petition has been taken up for final disposal.

4. Having heard the learned counsel for the parties, in the facts and circumstances of the case, it appears to the Court that while the Government was justified in setting aside the order of the Collector only on the ground that respondent No. 2 was a necessary party and was required to be heard, it cannot be gainsaid that looking to the nature of the dispute between the parties, i.e. the petitioner and respondent No. 2 herein, it is necessary to have the respective lands in possession of the petitioner and respondent No. 2 properly measured by the City Survey Superintendent. Accordingly, the Collector is directed to depute City Survey Superintendent to measure the lands in possession of the petitioner and respondent No. 2 herein after giving a prior intimation to both the parties who shall be entitled to place the relevant material before the City Survey Superintendent, who shall go through the same and after inspection of all such material and taking measurements, submit a report to the Collector. The Collector shall thereafter hear the parties and finally decide the dispute between the parties afresh in light of the material which may be produced before the City Survey Superintendent and in light of the submissions which may be made by the petitioner and respondent No. 2 and their respective representatives. Such decision shall be rendered within three months from the date of receipt of this order.

5. Mr Raval, learned counsel for the petitioner has

submitted that till the proceedings are decided by the Collector, respondent No. 2 should be restrained from proceeding with any construction which he has commenced by now in spite of the order of status quo passed by this Court while admitting the petition.

6. Mr Pahwa, learned counsel for respondent No. 2 on the other hand has vehemently opposed the above request and submitted that the order directing the respondents to maintain status quo was passed ex-parte and the respondents did not have any opportunity to get the order vacated. He further submits that in any case the order of status quo should be construed in the context of the interim relief prayed for by the petitioner which was to restrain the authorities from making any change in the entries in the revenue record.

7. Having heard the learned counsel for the parties on this question, it appears to the Court that the interests of justice would be served if the following interim arrangement is made till disposal of the proceedings before the Collector :-

I Respondent No. 2 shall not proceed with any further construction on the land in question before filing an undertaking before this Court that -

- (i) respondent No. 2 shall deposit a sum of Rs. 20,000/- in this Court within three weeks from today,
- (ii) the additional construction is to be made only on the already existing structure which was in existence prior to the date of filing of the petition,
- (iii) no construction shall be made except in accordance with the building permission of the Gram Panchayat or the concerned local authority.
- (iv) the construction shall abide by the outcome of the proceedings before the Collector subject to the rights of the parties to challenge the same before appropriate forum.

II It is directed that upon of the aforesaid amount of Rs. 20,000/- being deposited in this Court, the same shall be invested by the Registry in

Fixed Deposit for a period of six months and the same shall abide by the outcome of the proceedings before the Collector. Liberty is reserved to either of the parties to move this Court for appropriate directions with regard to the amount in F.D. and cumulative interest.

III This interim arrangement is made without prejudice to the rights and contentions of the parties and their respective rights to initiate appropriate proceedings in appropriate forum. If respondent No. 2 commits breach of the undertaking or any of the conditions stipulated above, it would be open to the petitioner to initiate appropriate proceedings.

8. The petition is accordingly disposed of in terms of the aforesaid directions.

Rule is made absolute to the aforesaid extent with no order as to costs.

9. Since the main petition is disposed of, Civil Application No. 5784 of 1998 does not survive and the same is also disposed of.

June 24, 1998 (M.S. Shah, J.)